

IN THE SENATE

SENATE BILL NO. 1154

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO FISCAL AFFAIRS OF SCHOOL DISTRICTS; AMENDING SECTION 33-5303, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY AND TO DELETE REFERENCE TO MAXIMUM LIMITS OF STATE SCHOOL BOND GUARANTEES; AMENDING SECTION 33-5304, IDAHO CODE, TO PROVIDE FOR APPLICATIONS, TO REQUIRE CERTAIN VOTER APPROVAL PRIOR TO APPLICATION, TO PROVIDE FOR FEES, TO PROVIDE FOR THE IDAHO SCHOOL BOND GUARANTY ADMINISTRATIVE FUND, TO PROVIDE A PROCESS RELATING TO THE DETERMINATION OF WHETHER A GUARANTY WILL BE MADE, TO PROVIDE FOR CERTIFICATES OF ELIGIBILITY AND TO PROVIDE FOR THE FOREGOING OF GUARANTIES BY SCHOOL DISTRICTS; AMENDING SECTION 33-5305, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE MONITORING OF FISCAL SOLVENCY OF SCHOOL DISTRICTS, TO REVISE PROVISIONS RELATING TO INELIGIBILITY FOR FUTURE GUARANTIES AND TO REVISE PROVISIONS RELATING TO APPLICABILITY; AMENDING SECTION 33-5307, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE INTERCEPTION OF CERTAIN PAYMENTS, TO PROVIDE CORRECT TERMINOLOGY, TO PROVIDE FOR THE IMPOSITION OF CERTAIN PENALTIES ON SCHOOL DISTRICTS AND TO PROVIDE THAT CERTAIN ACTION MAY NOT BE TAKEN BY SCHOOL DISTRICTS THAT WOULD INCREASE THE RISK THAT THE STATE'S GUARANTY WOULD BE CALLED UPON AN ADDITIONAL TIME; AMENDING SECTION 33-5310, IDAHO CODE, TO PROVIDE THAT CERTAIN SCHOOL DISTRICTS MAY SEEK SPECIFIED CREDIT ENHANCEMENT; AMENDING SECTION 57-728, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE CREDIT ENHANCEMENT PROGRAM FOR SCHOOL DISTRICTS, TO PROVIDE FOR RULEMAKING, TO REVISE AND TO PROVIDE A PROCESS FOR THE PARTICIPATION OF SCHOOL DISTRICTS IN THE CREDIT ENHANCEMENT PROGRAM, TO PROVIDE A PROCESS IN THE EVENT MONEYS ARE INSUFFICIENT TO PAY A DEBT SERVICE PAYMENT, TO REVISE AND TO PROVIDE TERMS AND CONDITIONS FOR CERTAIN NOTES, TO PROVIDE THAT THE BOARD SHALL MAKE AVAILABLE A SPECIFIED SUM FROM THE PUBLIC SCHOOL ENDOWMENT FUND FOR PURCHASING SPECIFIED NOTES, TO CLARIFY THE AMOUNT IN NOTES THE BOARD IS REQUIRED TO HOLD, TO PROVIDE A LIMITATION ON THE PRINCIPAL AMOUNT OF BONDS GUARANTEED BY THE CREDIT ENHANCEMENT PROGRAM AND TO PROVIDE A MAXIMUM LIMIT OF BONDS THAT MAY BE GUARANTEED BY THE CREDIT ENHANCEMENT PROGRAM; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 33-5303, Idaho Code, be, and the same is hereby amended to read as follows:

33-5303. STATE'S ~~GUARANTEE~~ GUARANTY – MONITORING OF FINANCIAL SOLVENCY CONTRACT WITH BONDHOLDERS – ~~GUARANTEE~~ GUARANTY – LIMITATION AS TO CERTAIN REFUNDED BONDS.

(1) (a) The state of Idaho pledges to and agrees with the holders of any bonds that the state will not alter, impair, or limit the rights vested by the default avoidance program with respect to the bonds until the bonds, together with applicable interest, are fully paid and discharged.

(b) Notwithstanding subsection (1)(a) of this section, nothing contained in this chapter precludes an alteration, impairment, or limitation if adequate provision is made by law for the protection of the holders of the bonds.

(c) Each school district may refer to this pledge and undertaking by the state in its bonds.

(2) (a) The sales tax of the state is pledged to guarantee full and timely payment of the principal of, either at the stated maturity or by any advancement of maturity pursuant to a mandatory sinking fund payment, and interest on, refunding bonds issued on and after March 1, 1999, for voter approved bonds which were voted on by the electorate prior to March 1, 1999, and voter approved bonds which were voted on by the electorate on and after March 1, 1999, as such payments shall become due, except that in the event of any acceleration of the due date of such principal by reason of mandatory or optional redemption or acceleration resulting from default or otherwise, other than any advancement of maturity pursuant to a mandatory sinking fund payment, the payments guaranteed shall be made in such amounts and at such times as such payments of principal would have been due had there not been any such acceleration.

(b) This guaranty does not extend to the payment of any redemption premium.

(c) Reference to this chapter by its title on the face of any bond conclusively establishes the guaranty provided to that bond under provisions of this chapter.

(3) (a) Any bond guaranteed under this chapter that is refunded and considered paid for, no longer has the benefit of the guaranty provided by this chapter from and after the date on which that bond was considered to be paid.

(b) Any refunding bond issued by a ~~board~~ school district that is itself secured by government obligations until the proceeds are applied to pay refunded bonds is not guaranteed under the provisions of this chapter, until the refunding bonds cease to be secured by government obligations.

(4) Only validly issued bonds issued after the effective date of this chapter are guaranteed under this chapter.

~~(5) On and after July 1, 2007, state school bond guarantees issued by the state of Idaho shall not exceed twenty million dollars (\$20,000,000) in the aggregate per school district. Notwithstanding this maximum limit, bond guarantees exceeding the twenty million dollar (\$20,000,000) limit prior to July 1, 2007, shall remain in effect. In the event school districts consolidate, the maximum state bond guarantee of the newly consolidated school district shall be the sum of the maximum limit of each school district participating in the consolidation. This new maximum limit shall also apply to bonds issued by the consolidated district after July 1, 2007.~~

SECTION 2. That Section 33-5304, Idaho Code, be, and the same is hereby amended to read as follows:

33-5304. PROGRAM ELIGIBILITY – OPTION TO FOREGO GUARANTY.

(1) (a) Any school district through its board of trustees or its superintendent may ~~request that apply to~~ the state treasurer ~~issue a certificate evidencing eligibility~~ for the state's guaranty of its eligible bonds under this chapter. Where voter approval of a bond issuance is required by law, the school district must have such voter approval prior to its application for the state's guaranty.

(b) The state treasurer may charge the school district an application fee equal to the greater of the estimated costs to the state treasurer to process the application or five hundred dollars (\$500), which shall be payable at the time the school district applies for a guaranty under this chapter. The state treasurer may charge a transaction fee of not more than five one-hundredths of one percent (.05%) of the total principal and interest payable on the school district's bonds. Such transaction fee shall be payable to the state treasurer at the time the school district issues the bonds guaranteed under this chapter and the application fee paid by the school district shall be credited against such transaction fee.

(c) There is hereby created in the state treasury the "Idaho School Bond Guaranty Administrative Fund" which shall be credited:

(i) Fees collected pursuant to this section;

(ii) Interest earned on the investment of idle moneys in the fund, which shall be paid to the fund; and

(iii) All other moneys as may be provided by law.

Moneys in the fund shall be continuously appropriated to the state treasurer, and any moneys remaining in the fund at the end of each fiscal year shall not be appropriated to any other fund. Moneys in the fund shall be used to defray costs associated with the implementation, administration, and oversight of the Idaho school bond guaranty act.

(d) The state superintendent of public instruction shall provide an analysis of an applicant school district's fiscal solvency upon the request of the state treasurer.

(e) After reviewing the request, the analysis of the superintendent of public instruction, the reports submitted by the school district pursuant to section 33-5305, Idaho Code, and other information available to the state treasurer, the state treasurer shall determine in good faith whether or not the financial affairs and condition of a school district are such that it would be imprudent for the state to guarantee the bonds of that school district. The state treasurer shall also determine in good faith whether the guarantee of the bonds of the school district will adversely impact the credit rating of the state of Idaho or other financing programs benefiting the state of Idaho.

~~(f) After reviewing the request, if~~ Unless the state treasurer ~~determines~~ finds that the ~~board is eligible~~ criteria set forth in subsection (1)(e) of this section prevents the issuance of a certificate of eligibility, the state treasurer shall promptly issue ~~the~~ a certificate of eligibility and provide it to the requesting ~~board~~ school district.

~~(eg)~~ (i) The school district receiving the certificate and all other persons may rely on the certificate as evidencing eligibility for the guaranty for one (1) year from and after the date of the certificate, without making further inquiry of the state treasurer during the year. The certificate of eligibility shall state that the ~~guarantee~~ guaranty

is good for the life of the bond. This ~~guarantee~~ guaranty shall be printed on all bonds guaranteed pursuant to this chapter or shall be an addendum attached to all bonds guaranteed pursuant to this chapter.

(ii) The certificate of eligibility is valid for the life of the bond, even if the state treasurer later determines that the school district is ineligible for future guaranties. ~~If the state treasurer later determines that the school district is ineligible, the treasurer shall publish a twenty (20) days' notice as provided in section 60-109, Idaho Code, in a newspaper of general circulation in the county of the school district and in a newspaper in the county where the state capitol is located regarding the ineligibility. Additionally, the treasurer shall notify the underwriter of the bonds and the bond counsel of its office's finding. The underwriter and the bond counsel shall make a good faith effort to notify holders of the bonds of the treasurer's determination.~~

(2) Any ~~board~~ school district that chooses to forego the benefits of the guaranty provided by this chapter for a particular issue of bonds may do so by not referring to this chapter on the face of its bonds.

(3) Any school district that has bonds, the principal of or interest on which has been paid, in whole or in part, by the state under this chapter may not issue any additional bonds guaranteed by this act until:

(a) All payment obligations of the school district to the state under the default avoidance program are satisfied; and

(b) The state treasurer certifies in writing, to be kept on file by the state treasurer, that the school district is fiscally solvent.

(4) Bonds not guaranteed by this chapter are not included in the definition of "bond" in section 33-5302, Idaho Code, as used generally in this chapter, are not subject to the requirements of and do not receive the benefits of this chapter.

SECTION 3. That Section 33-5305, Idaho Code, be, and the same is hereby amended to read as follows:

33-5305. STATE ~~TREASURER~~ TO MONITOR FISCAL SOLVENCY OF SCHOOL DISTRICTS – DUTIES OF STATE TREASURER AND ~~ATTORNEY GENERAL~~ STATE SUPERINTENDENT OF PUBLIC INSTRUCTION. (1) The state treasurer shall:

(a) ~~Monitor the financial affairs and condition of each school district in the state to evaluate each school district's financial solvency;~~ Receive the following from each school district applying for the state's guaranty under this chapter and each school district receiving the state's guaranty under this chapter:

(i) A copy of the annual statement of financial condition and report required in section 33-701, Idaho Code; and

(ii) A copy of the complete audit of the financial statements of the school district prepared pursuant to section 33-701, Idaho Code.

(b) At least annually, report his conclusions concerning the fiscal solvency of school districts receiving a guaranty under this chapter to the governor, the legislature, the endowment fund investment board and the state superintendent of public instruction; and

(c) Report immediately to the governor, the endowment fund investment board and the state superintendent of public instruction any circumstances suggesting that a school

district will be unable to timely meet its debt service obligations and recommend a course of remedial action.

(2) The state superintendent of public instruction shall provide an analysis of a school district's current fiscal solvency upon the request of the state treasurer.

(3) (a) After examining the ~~report~~ analysis of the ~~school district~~ state superintendent of public instruction and other information available to the state treasurer, the state treasurer shall determine whether or not the financial affairs and condition of a ~~board~~ school district are such that it would be imprudent for the state to guarantee ~~the~~ future bonds of that school district.

(b) If the state treasurer determines that the state should not guarantee the bonds of that ~~board~~ school district, the state treasurer shall:

(i) Prepare a determination of ineligibility for future guaranties; and

(ii) Keep it on file in the office of the state treasurer; ~~and~~

~~(iii) Make the necessary advertisements and notifications as provided in section 33-5304, Idaho Code.~~

(c) The state treasurer may remove a school district from the status of ineligibility for future guaranties when a subsequent report of the school district or other information made available to the state treasurer evidences that it is no longer imprudent for the state to guarantee the bonds of that ~~board~~ school district.

~~(34)~~ Nothing in this section affects the state's guaranty of bonds of a ~~board~~ school district issued:

(a) Before determination of ineligibility for future guaranties;

(b) After the eligibility for future guaranties of the ~~board~~ school district is restored; or

(c) Under a certificate of eligibility issued under this chapter.

SECTION 4. That Section 33-5307, Idaho Code, be, and the same is hereby amended to read as follows:

33-5307. STATE FINANCIAL ASSISTANCE INTERCEPT MECHANISM – DUTIES OF STATE TREASURER ~~DUTIES~~ AND ATTORNEY GENERAL – INTEREST AND PENALTY PROVISIONS.

(1) (a) If one (1) or more payments on bonds are made by the state treasurer as provided in this chapter, the state treasurer shall:

(i) Immediately intercept any payments ~~from the public school permanent endowment fund or~~ from any ~~other~~ source of operating moneys provided by the state to the ~~board~~ school district that issued the bonds that would otherwise be paid to the ~~board~~ school district by the state; and

(ii) Apply the intercepted payments to reimburse the state for payments made pursuant to the state's guaranty until all obligations of the ~~board~~ school district to the state arising from those payments, including interest and penalties, are paid in full.

(b) The state has no obligation to the school district or to any person or entity to replace any moneys intercepted under the authority of this subsection.

(2) The school district that issued bonds for which the state has made all or part of a debt service payment shall:

(a) Reimburse all moneys drawn by the state treasurer on its behalf;

(b) Pay interest to the state on all moneys paid by the state from the date the moneys drawn to the date they are repaid at a rate not less than the average prime rate for national money center banks plus one percent (1%); and

(c) Pay all penalties required by this chapter.

(3) (a) The state treasurer shall establish the reimbursement interest rate after considering the circumstances of any prior draws by the school district on the state, market interest and penalty rates, and the cost of funds, if any, that were required to be borrowed by the state to make payments on the bonds.

(b) The state treasurer may, after considering the circumstances giving rise to the failure of the ~~board~~ school district to make payment on its bonds in a timely manner, impose on the ~~board~~ school district a penalty of not more than five percent (5%) of the amount paid by the state pursuant to its guaranty for each instance in which a payment by the state is made.

(4) (a) (i) If the state treasurer determines that amounts obtained under this section will not reimburse the state in full within one (1) year from the state's payment of a school district's scheduled debt service payment, the state treasurer shall pursue any legal action, including mandamus, against the school district and its board to compel it to:

1. Levy and provide tax revenues to pay debt service on its bonds when due; and

2. Meet its repayment obligations to the state.

(ii) In pursuing its rights under paragraph (a) of this subsection, the state shall have the same substantive and procedural rights as would a holder of the bonds of a school district.

(b) The attorney general shall assist the state treasurer in these duties.

(c) The school district shall pay the attorney's fees, expenses, and costs of the state treasurer and the attorney general.

(5) (a) Except as provided in paragraph (c) of this subsection, any school district whose operating funds were intercepted under this section may replace those funds from other school district moneys or from property taxes, subject to the limitations provided in this subsection.

(b) A school district may use property taxes or other moneys to replace intercepted funds only if the property taxes or other moneys were derived from:

(i) Taxes originally levied to make the payment but which were not timely received by the school district;

(ii) Taxes from a supplemental levy made to make the missed payment or to replace the intercepted moneys;

(iii) Moneys transferred from the undistributed reserve, if any, of the school district; or

(iv) Any other source of money on hand and legally available.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this subsection, a school district may not replace operating funds intercepted by the state with moneys collected and held to make payments on bonds if that replacement would divert moneys from the payment of future debt service on the bonds and increase the risk that the state's guaranty would be called upon ~~a second~~ an additional time.

SECTION 5. That Section 33-5310, Idaho Code, be, and the same is hereby amended to read as follows:

33-5310. ~~WHEN CREDIT ENHANCEMENT PROGRAM TAKES EFFECT. The credit enhancement program for school district bonds and loans pursuant thereto as provided in section 57-728, Idaho Code, shall take effect if the state treasurer certifies that moneys from the sales tax account or from the provisions of this chapter are insufficient to pay the principal of and interest on the general obligation notes issued pursuant to section 33-5308, Idaho Code, and due and payable, and so notifies the endowment fund investment board in writing. If approved to participate in the Idaho school bond guaranty program established in this chapter, a school district may also seek credit enhancement, as authorized pursuant to section 57-728, Idaho Code, by applying therefor pursuant to section 57-728(3), Idaho Code.~~

SECTION 6. That Section 57-728, Idaho Code, be, and the same is hereby amended to read as follows:

57-728. CREDIT ENHANCEMENT PROGRAM FOR SCHOOL DISTRICT BONDS. (1) The endowment fund investment board shall administer a school district bond credit enhancement program in accordance with this section and in conjunction with chapter 53, title 33, Idaho Code, ~~and may promulgate rules to implement it.~~ This program applies to voter approved bonds issued by school districts. The program is intended to benefit school districts by purchasing authorizing the board to purchase notes issued by the state of Idaho, whereby the state may guarantee payment of school district bonded indebtedness in order to avoid an imminent default, providing lower interest rates at which the bonds may be issued for the purpose of making debt service payments under the Idaho school bond guaranty program established in chapter 53, title 33, Idaho Code.

(2) The board shall promulgate rules to implement the program. Rules may include the imposition of guaranty and administrative fees upon school districts participating in the program. Rules shall include:

(a) The application materials school districts must provide to the board; and

(b) The application procedures, submission deadlines, and the time periods for review and approval or denial of an application.

(3) A school district that seeks the guarantee of bonds credit enhancement under this program shall first apply to the state treasurer pursuant to participate in the Idaho school bond guaranty program established in chapter 53, title 33, Idaho Code. If approved to participate in the Idaho school bond guaranty program, a school district may apply for credit enhancement, as provided in section 33-530410, Idaho Code. The state treasurer shall transmit all approved applications to the board. The board may challenge an approved application within three (3) business days of their receipt of the same. If no challenge is issued within three (3) business days the application shall be deemed approved by the board. In the event of a challenge in writing to the state treasurer, the treasurer and the board shall have ten (10) business days to mutually approve the application. If after a challenge by the board, the application is not mutually approved within the ten (10) business days, the application shall be deemed rejected. The board shall approve or deny applications as set forth in rule but not longer than twenty (20) days following the submission of a complete application to the board. Nothing contained herein shall prohibit a school district from reapplying following a rejected application.

(34) Upon approval of a school district's application to participate in the credit enhancement program ~~under this section~~, the following shall be in effect in the event moneys from the sales tax account or from the provisions of section 33-5309, Idaho Code, are insufficient to pay ~~the principal of and interest on the notes issued by the state pursuant to section 33-5308, Idaho Code, the endowment fund shall purchase new notes from the state, in accordance with section 33-5308, Idaho Code, the proceeds of which shall be sufficient to pay the principal of and the interest on the original notes as they become due pursuant to section 33-5308, Idaho Code. The new notes shall be subject to the following terms and conditions:~~ a debt service payment under the Idaho school bond guaranty program:

(a) The board may purchase on behalf of the public school endowment fund, or from other funds administered by the board, notes from the state issued by the state treasurer, in accordance with section 33-5308, Idaho Code, under such terms as are negotiated between the board and the state treasurer; or

(b) Upon the request of the state treasurer pursuant to section 33-5308, Idaho Code, the board shall purchase on behalf of the public school endowment fund notes issued by the state treasurer, the proceeds of which shall be sufficient to pay the debt service payments as they become due.

(5) Notes purchased by the board pursuant to subsection (4)(b) of this section shall be subject to the following terms and conditions:

(a) The notes shall bear interest at a rate equal to ~~an~~ the annual rate ~~ten percent (10%) higher than the average interest earned on the investments of the public school permanent endowment fund in the four (4) calendar quarters preceding the quarter in which the loan occurred and if this figure is not equal to the percentage return of the fund's highest category of investments in its portfolio, then the interest rate shall equal that percentage return on investment, plus all additional administrative costs related to these investments~~ of one (1) year treasury bills, as published by the federal reserve board as of the date of the request of the state treasurer, plus four hundred (400) basis points, plus, for the first six (6) months of the term of the note, an amount, as determined by the board, up to a maximum of fifty (50) basis points, to cover all additional administrative and transaction costs related to the purchase of the notes;

(b) The notes will have a maximum term of one (1) year, and may be renewed at the request of the state treasurer;

(c) The notes, including principal and interest, shall be repaid from the school district's next payments pursuant to ~~chapter 8, title 33~~ section 33-5307, Idaho Code, as collected by the state treasurer;

(ed) The state may make additional payments on the note;

(~~de~~) The ~~endowment fund investment~~ board may require the state treasurer to compel the school district to modify its fiscal practices and its general operations if the board determines that there is a substantial likelihood that the school district will not be able to make future payments required under this section.

(46) The provisions of this section shall not be deemed to interfere with the state treasurer's ability in chapter 53, title 33, Idaho Code, to obtain repayment of a delinquent obligation.

(57) For purposes of administering the provisions of this section, the board shall make available the sum of ~~at least~~ two hundred million dollars (\$200,000,000) from the public school ~~permanent~~ endowment fund, for purposes of purchasing notes as authorized by this section.

1 Nothing in this section shall require the board to hold at any time in excess of two hundred
2 million dollars (\$200,000,000) in notes issued pursuant to the credit enhancement program.
3 The principal amount of ~~debt~~ bonds guaranteed by the credit enhancement program shall not
4 be greater than four (4) times the amount made available by the board from the public school
5 permanent endowment fund for the purpose of purchasing notes.

6 (8) On and after the effective date of this section, the aggregate principal amount of
7 school district bonds outstanding that may be guaranteed by the credit enhancement program
8 shall not exceed twenty million dollars (\$20,000,000) per school district. Notwithstanding
9 this maximum limit, credit enhancement of bond guaranties for bonds issued prior to July
10 1, 2007, exceeding the twenty million dollar (\$20,000,000) maximum limit shall remain in
11 effect. In the event school districts consolidate, the maximum credit enhancement of the bonds
12 of the newly consolidated school district shall be the sum of the maximum limit of each
13 school district participating in the consolidation. The state treasurer shall monitor the principal
14 amounts of each school district participating in the credit enhancement program and provide
15 such information to the board.

16 SECTION 7. An emergency existing therefor, which emergency is hereby declared to
17 exist, this act shall be in full force and effect on and after its passage and approval.